

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 FRANK FAHY,

No. C-09-1420 MMC

12 Plaintiff,

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTION FOR
ORDER TO ENLARGE TIME FOR
AMENDING COMPLAINT**

13 v.

14 ORPHEOS TARBOX, et al.,

15 Defendants

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17 Before the Court is plaintiff Frank Fahy's "Motion for Order to Enlarge Time for
18 Amending Complaint," filed July 30, 2010, by which motion plaintiff seeks an extension of
19 the August 2, 2010 deadline to file a motion to amend the pleadings.¹ Defendants have not
20 filed a response. Having read and considered the motion, the Court hereby rules as
21 follows.

22 A scheduling order, such as an order setting a deadline to file a motion to amend,
23 may be modified only upon a showing of "good cause" by the party seeking the
24 modification. See Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily

25 considers the diligence of the party seeking the amendment." Johnson v. Mammoth
Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). A "district court may modify the
26 pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking

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1The deadline is set forth in the Civil Minutes filed May 28, 2010.

1 the extension." Id. (internal quotation and citation omitted).

2 In his motion, plaintiff asserts he needs further time to determine whether grounds to
3 amend may exist. Plaintiff does not indicate the nature of any proposed amendment,
4 however. In the absence of a showing as to the nature of the proposed amendment, the
5 Court cannot determine whether plaintiff has been diligent. Cf. Johnson, 975 F.2d at 609
6 (affirming district court's finding plaintiff had not been diligent in seeking leave to amend,
7 where plaintiff was aware of basis for proposed new claim before deadline to amend had
8 passed).

9 Accordingly, plaintiff's motion for an enlargement of time is hereby DENIED without
10 prejudice.

11 **IT IS SO ORDERED.**

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13 Dated: August 10, 2010
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MAXINE M. CHESNEY
United States District Judge

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